

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5701**

**PETITION OF ROGELIO NOVEY**  
(Hearing held February 6, 2001)

**OPINION OF THE BOARD**  
(Effective date of Opinion, March 7, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Sections 59-C-1.323(a) and 59-B-3.1. The petitioner proposes to construct of a covered porch that requires a 8.50 foot variance as it is within 28.50 feet of the established front building line. The required setback is thirty-seven (37) feet.

Nancy and Rogelio Novey, the petitioners, attended the public hearing.

The subject property is Lot 35, Block 57, Chevy Chase Section 2 Subdivision, located at 25 Oxford Street, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 79456068).

Decision of the Board: Requested variance **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a 10 x 5 foot covered porch.
2. The petitioners testified that the residence is peculiar because the prior owner built the structure around a four-car garage to house his car collection. See, Exhibit No. 12(a). The petitioners testified that they remodeled the house and that the residence now has a two-car garage. See, Exhibit No. 12(b).
3. The petitioners testified that the other homes in the neighborhood have driveways that lead up to the living area, the rear, or the side of the property, but that their driveway and garage are located in the middle of the property.
4. The petitioners testified that the proposed construction would permit the repair and the widening of the fire escape to the front door. The petitioners testified that the fire escape is 3½ feet wide, made of metal and is in need of repair.
5. The petitioners testified that they have received the approval of Historic Preservation Commission. In response to questions from the Board, the petitioners stated that their residence is a not contributing structure in the district, and that the designation is a result of the description of the district.

## **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioners' property has no topographical or other conditions that are peculiar to the lot. The Board finds that the lots in the petitioners' immediate neighborhood are of similar size and, if anything, the petitioners' lot is somewhat wider. See, Exhibit No. 8.

The Board observes that the design and the internal plan of the residence is very unusual, however this characteristic of the structure is not a basis for granting a variance.

The petition does not meet the requirements of Section 59-G-3.1(a) and the Board did not consider the other requirements set forth in that section of the Zoning Ordinance for the grant of a variance. Accordingly, the requested variance of 8.50 feet from the required thirty-seven (37) foot established front building line is denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 7th day of March, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.